IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

T.T.R. No. 49 of 2005
WITH
CLMA No. 5041 of 2005

M/s Jalpac India Ltd
Haldwani, District Nainital
Through its General Manager
Brig. P.D. Pathak (Retd.)
S/o Late Shri F.C. Pathak
R/o 339, Sector 29
Arun Vihar, Noida. …….Revisionist

Vs.

The Commissioner of Trade Tax
Uttaranchal at Dehradun …..Respondent

AND

T.R.R. No. 50 of 2005
WITH
CLMA No. 5040 of 2005

M/s Jalpac India Ltd
Haldwani, District Nainital
Through its General Manager
Brig. P.D. Pathak (Retd.)
S/o Late Shri F.C. Pathak
R/o 339, Sector 29
Arun Vihar, Noida ……..Revisionist

Vs.

The Commissioner of Trade Tax
Uttaranchal at Dehradun …..Respondent

Shri Bharat Ji Agarwal, learned Sr. Advocate and Shri S.K. Post, learned Counsel for the Applicant.
Shri N.C. Gupta, Learned Standing Counsel for the respondent.

Hon'ble P. C. Pant, J.

These revisions, preferred under Section 11(1) of Trade Tax Act, 1948, are directed against the common judgment and order passed on 19.04.2005, by the Trade Tax Tribunal, Dehradun, camp Haldwani. By said order, S.A. No. 57 of 2001 and S.A. No. 58 of 2001, are disposed of, remanding the

cases back to the Assessing Authority. The revisionists are dealer in metalised paper and related items. The matter pertains to the assessment year 1997-98. The revision No. 49 of 2005, relates to the State Sales Tax, while revision No. 50 of 2005, pertains to Central Sales Tax.

Heard Shri Bharat Ji Agarwal, learned senior counsel on behalf of the assessee and Learned standing counsel for the State.

The revisionists have challenged the impugned order on the ground that learned Trade Tax Tribunal, being second appellant court, could have disposed of the appeals on merits, deciding the factual controversies between the parties, instead of remanding the same to the Assessing Authority. In this connection, attention of this Court has been drawn to the principle of law laid down in Nehru Steel Rolling Mills Vs. Commissioner Sales Tax, 1993 UPTC Pg. 407 and that contained in Dharampal Satyapal Limited Vs. Commissioner Trade Tax, 2003 UPTC Pg. 1192. In both the aforesaid case laws, it has been held that the appellate authority should not unnecessarily remand the case and instead it should decide the appeal on merits. Undisputedly, the factual controversies can be finally decided by the second appellant authority i.e. by Trade Tax Tribunal. In the present revisions, the main question raised relates to as to whether the Trade Tax Tribunal was justified in remanding the case to the Assessing Authority or not?

I have gone though the judgment of the learned Trade Tax Tribunal and found that after examining one or two instances of suspicious transportation of the goods in question, without giving findings on the controversies raised by the parties, before the tribunal, the cases are remanded. It has also not been clarified in the impugned order whether imposition of the tax at the rate of 7.5% for the metalised paper and 4% tax

on the plastic scrap was rightly assessed or not? Learned Standing Counsel also concede that the tribunal may be directed to decide the appeals on merits, filed by the revenue, before it.

Accordingly, both the revisions are disposed of at the admission stage, setting aside the impugned order and directing that Trade Tax Tribunal, Dehradun, shall dispose of the appeals No. 57 of 2001 and 58 of 2001, both relating to assessing year 1997-98, on merits by entering to the factual controversies also.

(Prafulla C. Pant, J.)

Dt. 30.07.2005

Sweta